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ORDER NO. 84-278

ENTERED APRIL 16 1984

BEFORE THE DEPARTMENT OF COMMERCE

AND

THE PUBLIC UTILITY COMMISSIONER

OF OREGON

AR 90

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission  
Office of the Secretary

In the Matter of Adopting a Rule )  
Relating to Compensation for ) ORDER  
Attachments to Utility Facilities.)

This proceeding deals with the resolution of disputes involving attachments to utility poles. ORS 757.270 through 757.290 address the matter and establish a regulatory framework for setting fair rates and terms for pole attachments. ORS 757.273 gives the Public Utility Commissioner authority to regulate rental rates and terms for attachments to poles of investor-owned public utilities providing electric, telephone, or telegraph service. ORS 757.276 gives similar authority to the Director of the Department of Commerce over attachments to the poles of People's Utility Districts, including entities cooperatively organized or owned by a governmental unit. Rates agreed upon between contracting parties are presumed to be just, fair, and reasonable unless found by the Director or Commissioner to be adverse to the public interest. Parties may submit disputes to the Director or Commissioner for determination of rates or terms that are fair, just, and reasonable. The provisions of ORS 757.270 through 757.290 do not apply to attachments by one electric utility company on the poles of another electric utility company.

On January 4, 1983, the Oregon Cable Communications Association, Inc. (OCCA) filed a petition for rulemaking with the Department of Commerce, seeking to establish fair rental rates for pole attachments. To date, neither the Director nor the Commissioner have adopted rules establishing guidelines for settling pole attachment disputes.<sup>1</sup>

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<sup>1</sup>Two contested cases await the outcome of this proceeding. A complaint filed with the Director involves a dispute between two cable television companies and an electric cooperative. A complaint filed with the Commissioner involves a dispute between various telephone companies and an electric utility company.

On February 22, 1983, then-Director Jane Huston and then-Commissioner John Lobdell issued Order No. 83-112 initiating this joint proceeding to consider adopting rules to govern proceedings involving disputes between pole owners and licensees attaching cable or wire to poles. The issues facing the Director and the Commissioner are the same and this proceeding provides an opportunity to jointly consider those issues.

Notice of the initiation of this proceeding was published in the March 15, 1983, issue of the Administrative Rules Bulletin published by the Oregon Secretary of State. Notice also was sent to all cable television companies and utility companies providing telephone or electric service in Oregon.

On March 30, 1983, Jane Huston and Lowell Bergen, the Hearings Officer in this proceeding, presided over a conference to discuss procedural matters. The parties were given until May 9, 1983, to submit arguments and proposed language for a Proposed Rule. Later, the parties were given until June 13, 1983, to respond to the first submissions.

On July 5, 1983, Proposed Rules were issued. The parties filed written comments and arguments about the Proposed Rules on August 22, 1983, January 30 and February 17, 1984. Notice of the Proposed Rules was published in the September 15, 1983, issue of the Administrative Rules Bulletin published by the Oregon Secretary of State.

This order adopts rules governing complaint proceedings brought pursuant to ORS 757.270 through 757.290 and address the issues involved in deciding on those rules. The final rule adopted by the Director of the Department of Commerce is shown in Appendix "A" to this order. The final rule adopted by the Public Utility Commissioner is shown in Appendix "B" to this order.

Those entering appearances are listed on Appendix "C" to this order.

#### SUMMARY OF PROPOSED RULES

The Proposed Rules utilize this rental rate formula for attachments: the depreciated installed cost of a bare pole x the carrying charge x the portion of the usable portion of the pole occupied by the attachment. In addition, the rules define "usable space," "pole cost," and "carrying charge"; mandate payment for preconstruction and other one-time expenses; and establish a penalty for unauthorized attachments.

APPLICABILITY OF RULES

Should the rules apply only to attachments by cable television companies or also to attachments by telephone and electric companies?

The Proposed Rules apply to all types of licensees (except electric utility companies who attach wires or cables to the poles of another electric utility company). The order initiating this proceeding does not limit the proceeding to attachments by any particular type of licensee.

OCCA argues that the pole attachments statutes were not intended to apply to attachments by telephone or electric companies on poles owned by utility companies. A careful reading of the statutes does not support that argument. ORS 757.270(2) defines a licensee as any entity that is authorized to construct attachments on public ways. Telephone and electric companies have that authority. The attachment definition specifically includes wire and cable installations for the transmission of telephone messages and electric currents. The statutory authority is broad enough to include attachments by cable television, telephone, and electric companies.

OCCA also argues that cable television companies should be treated differently because by contract they are required to pay the cost of rearranging the attachments on a pole or of installing a new, larger pole if an existing pole has insufficient space to accommodate a cable television attachment. OCCA does not say how often that has occurred. Coos-Curry Electric Cooperative, Inc., says that has occurred twice since 1971 in its service territory. A cable television company was charged \$10.58 in 1973 and another cable television company was charged \$300 in 1981. The record does not reveal what would occur if a telephone or electric company wanted to attach to a pole already used to maximum capacity.

Any obligation that might be imposed on cable television companies to bear the cost of a new or rearranged pole should be balanced against the obligation of telephone and electric companies to bear the cost of installing the poles initially. Cable television companies have refused to become joint owners. ORS 757.282 also puts the costs of the unrented portions of a pole on the pole owner.

OCCA also argues that the cable attached by cable television companies is lighter than that attached by telephone and electric companies. That contention is disputed by other parties, particularly the telephone companies. They argue that modern telephone cable is about the same weight as cable attached by cable television companies and that size, not weight, is the primary determinant of stress-loading on poles.

The cables are not fundamentally different--one rate formula can and should be applied to them all. The larger installations will occupy more space and will incur a larger rental fee.

Other parties argue that traditional relationships between electric and telephone companies are different than between cable television companies and utility companies and that these differences suggest a different rule for cable television companies. Although differences exist, they do not mandate a separate formula. Traditional relationships can be factored into contracts among the parties--the rule adopted in this proceeding does not invalidate contracts but applies only when a complaint is filed with the Commissioner or Director. All licensees occupy a portion of a pole and should pay a reasonable rent for that privilege.

There is no need to have a separate proceeding to construct a different rate formula for electric and telephone companies. The rates they pay may be different, but the formula used to determine the rates should be the same.

#### USABLE SPACE OCCUPIED

Attachments create loads on poles by their weight and size. They also can make climbing the pole more difficult and can increase the difficulty of gaining access to other attachments. In determining the portion of a pole an attachment occupies, the total vertical space it occupies, including brackets, amplifiers, junction boxes, looped or dangled wires, and other space rendered unavailable to others, is included.

#### CLEARANCE SPACE AND SUPPORT EQUIPMENT

ORS 757.282 lists what may be included in the actual capital and operating expenses charged to a licensee. Under the statute, a licensee may be charged for a share of the required support and clearance space in proportion to the space used for its attachment above minimum attachment grade level.

The required clearance space above ground level and between electricity-carrying and communications-carrying attachments is established by the National Electrical Safety Code (NESC). The NESC requires the lowest cable or wire attachment on a pole to be high enough to achieve a specified distance above ground level. The parties disagree as to whether the minimum distance is 18 feet, 19 feet, or 20 feet. The parties apparently differ in their allowance for terrain variations and

line sag between poles. The intent of the NESC provision--to enhance safety--can best be accommodated by declaring the minimum clearance space above ground to be 20 feet.

The NESC also requires minimum clearance space between cables and wires carrying electricity and those carrying communications. The parties also disagree on what that clearance space is. The distance most often cited is 40 inches. But others point out that it can be as little as 4 inches or as much as 60 inches, depending on the size of the wires and the grounding techniques employed. The rules adopted in this proceeding do not specify the clearance space between electric and communication attachments because the required minimum distance can vary from pole to pole. Disputing parties will have the opportunity to prove in a contested case what clearance space should be applied.

The rental rate formula applies the percentage of the usable portion of a pole a licensee uses to the costs assigned to the clearance spaces.

Pole attachments are supported by guy wires attached to anchors in the ground. Licensees generally use their own guy wires to support their attachments, but frequently use anchors owned by pole owners. They should pay a rental fee on the use of support facilities owned by the pole owner.

The Proposed Rules include the costs of anchors, anchor rods, and guy wires in figuring the cost of a pole. Since licensees do not always use the support facilities of the pole owner, the language has been changed to charge licensees for the support facilities of the pole owner they actually use. The rental rate formula is the same as for space used on the pole.

It may be difficult for pole owners to determine how many of their pole support facilities are used by licensees. No satisfactory method for resolving that problem by rule was suggested. Perhaps pole owners can, by contract, put the burden on each licensee to notify them of each pole contacted and of the support facilities used, then charge for unauthorized use under subsection 6 of the rule. Maybe a survey or sample can determine usage.

#### TOP ONE FOOT OF A POLE

Some parties suggest that the top one foot of each pole should be considered unusable. That view is reflected in the Proposed Rules. OCCA disagrees, arguing that the top one foot is not only usable, but in fact used. Several pictures it submitted show the top foot of many poles to be in use.

The argument in favor of declaring the top one foot to be unusable is that the top end of the pole needs to be protected. But the top one foot of many poles is, in fact, used. Apparently the pole end can be protected even if an attachment is made within a foot of the top if it is attached to the side, rather than the end, of the pole. In any event, the rules adopted in this proceeding consider the top one foot of a pole to be usable because it is used in many instances.

#### PRESUMED DIMENSIONS

The Proposed Rules divide poles into usable and nonusable portions. Each is defined but the dimensions of each segment are left to negotiations among the parties. Some parties want more specificity in the rules, arguing that the rules should specify pole sizes, the portion buried below ground, the portion used by each type of licensee, and the portion reserved for safety clearance. These parties suggest that the rules either establish those dimensions or establish presumptions that could be overcome by convincing evidence. Others disagree with that approach, saying it is too simplistic to be fair and reasonable.

The final rules partially fulfill the desire for greater specificity by specifying the average depth poles are buried in the ground and the clearance space above ground level. But the Director and the Commissioner have decided not to make the rules as detailed as some suggest.

Several parties addressed the amount of space occupied by cable television licensees. Much less attention was directed to the space occupied by telephone and electric attachments, particularly the latter. As a result, there is inadequate information in the record to support, with confidence, a determination of the space each type of licensee should be assigned.

Perhaps that is just as well. The rules adopted in this proceeding will affect many different kinds of pole owners and licensees. One, two, or three parties may use a pole. Their practices regarding pole sizes, attachment installation techniques, and contractual arrangements with each other differ significantly. Rather than attempt to divine averages that are reasonably fair for all parties, it is better to establish the basic principles and procedures in rules and let the details be proved in a contested case proceeding. The Director and Commissioner do not want to impose their ideas about pole attachments on the parties. They are available as a last resort when the contracting parties cannot agree among themselves.

UNAUTHORIZED ATTACHMENTS

Pole owners complain that they are not always notified when equipment is attached to their poles. The Proposed Rules provide that pole owners may charge those who make unauthorized attachments twice the normal rental rate from the date of their last inspection until the date of discovery.

Some parties argue that a penalty of two times the normal rate is inadequate to discourage unauthorized attachments. The point is well taken. The final rules make the penalty five times the normal rental rate.

Another criticism of the Proposed Rules is that the penalty should not stop when the unauthorized attachment is discovered. That also is a valid point because the normal rental rate would apply after discovery, minimizing the incentive to pay for the past unauthorized use. The final rule, therefore, continues the penalty rate until the unauthorized attachment is removed or full payment is made.

CONCLUSION

After considering the comments, views, and evidence presented in this proceeding, the Director and the Commissioner conclude that the rules set forth in Appendix "A" and Appendix "B" are fair and reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Oregon Administrative Rules are amended to include the rules shown in Appendix "A" and Appendix "B" to this order.

Made, entered, and effective

April 16, 1984

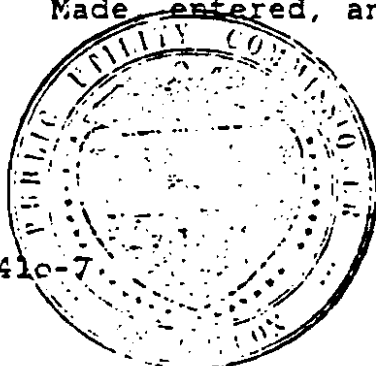


FRED HEARD

Director, Department of Commerce

Made, entered, and effective

April 16, 1984





GENE MAUDLIN

Public Utility Commissioner

ORDER NO. 84-278

APPENDIX "A"

POLE ATTACHMENTS

814-01-040

(1) This rule applies whenever a party files a complaint with the Director pursuant to ORS 757.270 through 757.290.

(2) In this rule:

- (a) "Carrying Charge" means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs attributable to the facilities used by the licensee. The cost of money component shall consist of a profit or margin determined in accordance with generally accepted accounting and operating practices applicable to the class of Public Utility District involved and shall be sufficient to meet debt service coverage requirements and any regulations imposed by governmental authorities having jurisdiction;
- (b) "Pole Cost" means the depreciated original installed cost of an average bare pole of the pole owner;
- (c) "Support Equipment" means guy wires, anchors, anchor rods, grounds, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments;
- (d) "Support Equipment Cost" means the average depreciated original installed cost of support equipment;
- (e) "Usable Space" means all the space on a pole, except the 5.5 feet below ground, the 20 feet of clearance space above ground level, and the clearance space between communications and power circuits.

(3) A disputed pole attachment rental rate will be computed by taking the pole cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.



(4) A disputed support equipment rental rate will be computed by taking the support equipment cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.

(5) The minimum usable space occupied by a licensee's attachment is one foot.

(6) The rental rates referred to in subsections 3 and 4 of this rule do not cover the costs of special inspections, preconstruction, make ready, change out, and rearrangement work. Charges for those activities shall be based on actual (including administrative) costs.

(7) When an unauthorized attachment is discovered, the pole owner may charge the party who made the unauthorized attachment five times the normal rental rate from the date of the owner's last inspection of the subject pole until the unauthorized attachment is removed or payment for it is made. The pole owner may also charge for any expenses it incurs as a result of the unauthorized attachment.

(8) All attachments shall meet state and federal clearance and other safety requirements, be adequately grounded, guyed, and anchored, and meet the provisions of contracts executed between the pole owner and the licensee. A pole owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the pole owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.

APPENDIX "B"

POLE ATTACHMENTS

B60-22-055

(1) This rule applies whenever a party files a complaint with the Commissioner pursuant to ORS 757.270 through 757.290.

(2) In this rule:

- (a) "Carrying Charge" means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs attributable to the facilities used by the licensee. The cost of money component shall be equal to the return on investment authorized by the Commissioner in the pole owner's most recent rate proceeding;
- (b) "Pole Cost" means the depreciated original installed cost of an average bare pole of the pole owner;
- (c) "Support Equipment" means guy wires, anchors, anchor rods, grounds, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments;
- (d) "Support Equipment Cost" means the average depreciated original installed cost of support equipment;
- (e) "Usable Space" means all the space on a pole, except the 5.5 feet below ground, the 20 feet of clearance space above ground level, and the clearance space between communications and power circuits.

(3) A disputed pole attachment rental rate will be computed by taking the pole cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.

(4) A disputed support equipment rental rate will be computed by taking the support equipment cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.

(5) The minimum usable space occupied by a licensee's attachment is one foot.

(6) The rental rates referred to in subsections 3 and 4 of this rule do not cover the costs of special inspections, preconstruction, make ready, change out, and rearrangement work. Charges for those activities shall be based on actual (including administrative) costs.

(7) When an unauthorized attachment is discovered, the pole owner may charge the party who made the unauthorized attachment five times the normal rental rate from the date of the owner's last inspection of the subject pole until the unauthorized attachment is removed or payment for it is made. The pole owner may also charge for any expenses it incurs as a result of the unauthorized attachment.

(8) All attachments shall meet state and federal clearance and other safety requirements, be adequately grounded, guyed, and anchored, and meet the provisions of contracts executed between the pole owner and the licensee. A pole owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the pole owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.

## APPENDIX "C"

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GENE MAUDLIN  
PUBLIC UTILITY COMMISSIONER OF OREGON

AR 90

State of Oregon     )  
                          )     ss  
County of Marion    )

I, Connie Feltz, Administrative Assistant of the Proceedings  
Division for the Public Utility Commissioner of the State of  
Oregon, do hereby certify that the attached copy of

Order No. 84-608

has been compared by me with the original thereof on file  
and of record in my custody, and that the same is a true  
and correct copy of said original and the whole thereof.

IN WITNESS WHEREOF I have hereunto set my hand and the  
Commissioner's seal this 11th day of January 1985.

GENE MAUDLIN  
PUBLIC UTILITY COMMISSIONER

Connie Feltz  
Connie Feltz  
Administrative Assistant  
Proceedings Division

ORDER NO. 84-608

ENTERED AUGUST 10 1984

BEFORE THE DEPARTMENT OF COMMERCE

AND

THE PUBLIC UTILITY COMMISSIONER

OF OREGON

AR 90

In the Matter of Adopting a Rule )  
Relating to Compensation for ) ORDER  
Attachments to Utility Facilities.)

On April 16, 1984, the Public Utility Commissioner and the Director of the Department of Commerce issued Order No. 84-278 adopting rules governing disputes about utility pole attachments. On June 15, 1984, Coos-Curry Electric Cooperative, Inc., petitioned for reconsideration of Order No. 84-278. Coos-Curry asks that the portion of the rules stating that 5.5 feet of a pole is buried below ground level be changed to 6 feet. On June 18, 1984, the Oregon Cable Communications Association (OCCA) petitioned for rehearing or reconsideration of Order No. 84-278. OCCA asks that the rules be changed in three respects: reduce the assumed minimum attachment height above ground level from 20 feet to 18 feet; declare the safety clearance space between communications and power circuits to be usable; and eliminate the possibility of a penalty charge being imposed retroactively.

Responses to the petitions were filed by OCCA, Coos-Curry, Portland General Electric Company, Pacific Power & Light Company, General Telephone Company of the Northwest, and the Oregon Independent Telephone Association.

Portion of Pole Buried Below Ground Level

The rules adopted in Order No. 84-278 declare all the space on a pole to be available or usable except the portion buried below ground level and the safety clearance spaces. The rules say 5.5 feet of a pole is buried below ground level.

Utility companies typically utilize poles between 30 feet and 45 feet in length, with 35-foot and 40-foot poles being the most common. The portion of a pole buried in the ground varies with the length of the pole. Practices vary among utility companies and geographical areas, but usually 30-foot poles are buried 5.5 feet in the ground, 35- and

40-foot poles are buried 6 feet in the ground, and 45-foot poles are buried 6.5 feet in the ground. The rules are being changed to more accurately reflect current industry practice and yet allow for future changes. The rules create a rebuttable presumption that 6 feet of a pole is buried below ground level.

#### Minimum Attachment Grade Level

Because ORS 757.282 provides for rental charges for attachments in proportion to the space used above minimum attachment grade level, it is necessary to establish the minimum attachment height above ground level. Order No. 84-278 sets it at 20 feet, based on the National Electrical Safety Code (NESC). OCCA asks that the minimum level be reduced to 18 feet.

The NESC establishes various minimum clearance heights, but the one applicable to most utility pole installations is 18 feet. OCCA argues that the NESC standard should be measured on the pole where an attachment is made rather than at mid-span where a cable or wire is closest to the ground. The language of the NESC does not support that argument. The NESC refers to vertical clearance of wires and cables above roads, streets, alleys, driveways, and other surfaces, and makes allowances for reduced spans between poles. To obtain the required heights over those surfaces at mid-span, attachments must be installed high enough on a pole to compensate for line sag between poles. Order No. 84-278 allows for two feet of sag between poles. That is reasonable and is not being changed.

#### Safety Clearance Space Between Communications and Electricity Circuits

ORS 757.282 authorizes a rental charge for support and clearance spaces in proportion to the space used for a pole attachment above minimum ground level. One of the clearance spaces is the NESC-mandated safety space between circuits carrying electricity and those carrying communications. The formula adopted in Order No. 84-278 designates that clearance space as unusable, meaning each party shares in the costs attributed to it in proportion to the usable space occupied. The formula does not specify what distance or proportion of the pole the clearance space occupies, leaving that for negotiation between the pole owner and licensee. The decision not to specify in the rules the dimension of that clearance space was based on the range of clearances allowed by the NESC. Industry practices do not result in a consistent clearance space.

OCCA contends that the space is usable and Order No. 84-278 errs in allowing the utility companies to contend otherwise in a contested hearing. It offers a compromise creating a presumption that the safety clearance space is 20 inches.

The OCCA compromise is rejected. There simply is too much variety in the techniques employed on the utility poles. The clearance space appropriate for one pole owner may be inappropriate for another. There is no claim that 20 inches accurately reflects reality. No evidence has been presented in the proceeding to support the 20-inch suggestion. Pole owners and licensees should be able to negotiate agreements that realistically treat the safety clearance space. Resolving the issue in a contested case is a last resort when negotiations are unsuccessful.

### Penalty Amount

Licensees do not always notify pole owners when attachments are installed. Order No. 84-278 addresses that problem and assesses a penalty of five times the normal rental rate from the pole owner's last inspection until full payment is made for an unauthorized attachment. OCCA is concerned about the possible retroactive application of the penalty provision and asks that the rules be changed to conclusively establish the last inspection as having occurred no earlier than January 1, 1985.

Commencing the penalty when a pole owner last inspected a pole does allow the possibility of the last inspection occurring many years ago, thus producing a substantial penalty. That possible but unlikely event has been eliminated by commencing the penalty when an unauthorized attachment is actually installed.

IT IS ORDERED that the petitions for reconsideration filed by Coos-Curry Electric Cooperative, Inc., on June 15, 1984, and the Oregon Cable Communications Association on June 18, 1984, are granted. Oregon Administrative Rules 814-01-040 and 860-22-055 are amended to read as shown on Exhibits "A" and "B" to this order.

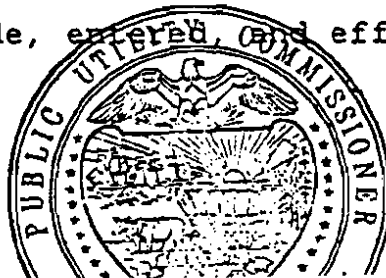
Made, entered, and effective


August 10, 1984

  
GENE MAUDLIN  
Public Utility Commissioner

Made, entered, and effective

8-10-84



  
FRED HEARD  
Director of the Department



APPENDIX "A"

POLE ATTACHMENTS

814-01-040

(1) This rule applies whenever a party files a complaint with the Director pursuant to ORS 757.270 through 757.290.

(2) In this rule:

- (a) "Carrying Charge" means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs attributable to the facilities used by the licensee. The cost of money component shall consist of a profit or margin determined in accordance with generally accepted accounting and operating practices applicable to the class of Public Utility District involved and shall be sufficient to meet debt service coverage requirements and any regulations imposed by governmental authorities having jurisdiction;
- (b) "Pole Cost" means the depreciated original installed cost of an average bare pole of the pole owner;
- (c) "Support Equipment" means guy wires, anchors, anchor rods, grounds, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments;
- (d) "Support Equipment Cost" means the average depreciated original installed cost of support equipment;
- (e) "Usable Space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.

(3) A disputed pole attachment rental rate will be computed by taking the pole cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.

(4) A disputed support equipment rental rate will be computed by taking the support equipment cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.

(5) The minimum usable space occupied by a licensee's attachment is one foot.

(6) The rental rates referred to in subsections 3 and 4 of this rule do not cover the costs of special inspections, preconstruction, make ready, change out, and rearrangement work. Charges for those activities shall be based on actual (including administrative) costs.

(7) Licensees shall report all attachments to the pole owner. A pole owner may impose a penalty charge for failure to report and pay for all attachments. If a pole owner and licensee do not agree on the penalty amount and submit the dispute to the Director, the penalty amount will be five times the normal rental rate from the date the attachment was installed until the appropriate rental rate is paid. A pole owner may also charge for any expenses it incurs as a result of an unauthorized attachment.

(8) All attachments shall meet state and federal clearance and other safety requirements, be adequately grounded, guyed, and anchored, and meet the provisions of contracts executed between the pole owner and the licensee. A pole owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the pole owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.

APPENDIX "B"

POLE ATTACHMENTS

860-22-055

(1) This rule applies whenever a party files a complaint with the Commissioner pursuant to ORS 757.270 through 757.290.

(2) In this rule:

- (a) "Carrying Charge" means the percentage of operation, maintenance, administrative, general, and depreciation expenses, taxes, and money costs attributable to the facilities used by the licensee. The cost of money component shall be equal to the return on investment authorized by the Commissioner in the pole owner's most recent rate proceeding;
- (b) "Pole Cost" means the depreciated original installed cost of an average bare pole of the pole owner;
- (c) "Support Equipment" means guy wires, anchors, anchor rods, grounds, and other accessories of the pole owner used by the licensee to support or stabilize pole attachments;
- (d) "Support Equipment Cost" means the average depreciated original installed cost of support equipment;
- (e) "Usable Space" means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.

(3) A disputed pole attachment rental rate will be computed by taking the pole cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.

(4) A disputed support equipment rental rate will be computed by taking the support equipment cost times the carrying charge times the portion of the usable space occupied by the licensee's attachment.

(5) The minimum usable space occupied by a licensee's attachment is one foot.

(6) The rental rates referred to in subsections 3 and 4 of this rule do not cover the costs of special inspections, preconstruction, make ready, change out, and rearrangement work. Charges for those activities shall be based on actual (including administrative) costs.

(7) Licensees shall report all attachments to the pole owner. A pole owner may impose a penalty charge for failure to report and pay for all attachments. If a pole owner and licensee do not agree on the penalty amount and submit the dispute to the Commissioner, the penalty amount will be five times the normal rental rate from the date the attachment was installed until the appropriate rental rate is paid. A pole owner may also charge for any expenses it incurs as a result of an unauthorized attachment.

(8) All attachments shall meet state and federal clearance and other safety requirements, be adequately grounded, guyed, and anchored, and meet the provisions of contracts executed between the pole owner and the licensee. A pole owner may, at its option, correct any attachment deficiencies and charge the licensee for its costs. Each licensee shall pay the pole owner for any fines, fees, damages, or other costs the licensee's attachments cause the pole owner to incur.